

AUG 26 2005

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**FACSIMILE COVER LETTER**

**To:** Group Art Unit 1635  
**Firm:** U.S. Patent and Trademark Office  
**Facsimile:** (571) 273-8300  
**From:** Thomas J. Kowalski (Reg. No. 32,147)  
 Deborah L. Lu (Reg. No. 50,940)  
**Date:** August 26, 2005  
**Re:** Application No. 09/245,603  
 FLH Reference No. 678503-2012.2  
**Number of Pages:** 13  
 (including cover page)

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If you do not receive all pages or are unable to read the transmission, please call and ask for Deborah Lu (Ext. 2088).

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Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

Enclosed is a AMENDMENT AND RESPONSE TO OFFICE ACTION, RECORD OF INTERVIEW, STATEMENT OF COMMON OWNERSHIP AND REQUEST FOR INTERVIEW for filing in connection with U.S. Application No. 09/245,603.

Sincerely,

*Deborah L. Lu*

Deborah L. Lu  
 Reg. No. 50,940

**CONFIDENTIALITY NOTICE**

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AUG 26 2005

PATENT  
678503-2012.2IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : CURIEL ET AL.

Serial No. : 09/245,603

For : ADENOVIRUS VECTOR CONTAINING A HETEROLOGOUS PEPTIDE EPITOPE IN THE HI LOOP OF THE FIBER KNOB

Filed : FEBRUARY 5, 1999

Examiner : BRIAN A. WHITEMAN

Art Unit : 1635

745 Fifth Avenue  
New York, NY 10151FACSIMILE

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Deborah L. Lu, Reg. No. 50,940

Type or print name of person signing certification

Deborah L. Lu

Signature

August 26, 2005

Date of Signature

AMENDMENT AND RESPONSE TO OFFICE ACTION, RECORD OF INTERVIEW,  
STATEMENT OF COMMON OWNERSHIP AND REQUEST FOR INTERVIEW

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the May 27, 2005 Office Action, setting a three month term for reply. The Commissioner is hereby authorized to charge any additionally required fee, or credit any overpayment in fees, to Deposit Account No. 50-0320.

PATENT  
678503-2012.2

RECORD OF INTERVIEW

This is to record matters discussed during the April 26, 2005 telephonic interview among Brian Whiteman (Examiner) and Thomas J. Kowalski (Attorney, Reg. No. 32,147). Examiner Whiteman is thanked for the many courtesies extended during the interview.

Examiner Whiteman notified Applicants' representative that a request for an interview was noted in the response filed on February 17, 2005. The Examiner also notified Applicants' representative that he wanted to hold the interview after a non-final rejection including new rejections was mailed to Applicants' representative so that the interview would be a complete interview of all issues regarding the claims in the instant application. Applicants' representative acknowledged having the interview after the non-final rejection was mailed.

Accordingly, a summary and record of the interview is provided herewith.

PATENT  
678503-2012.2**STATEMENT OF COMMON OWNERSHIP**

Please accept this statement of common ownership which asserts that The UAB Research Foundation is the common owner of U.S. Patent 6,824,771 ("the '771 patent) and application Serial No.: 09/245,603 ("the '603 application").

The Office Action dated May 27, 2005 included a rejection of claims 1, 2, 4, 9, 11 and 28 which utilized the '771 patent. While it is not agreed that obviousness has been established by the Examiner for the abovementioned claims, these rejections would be rendered moot if the '771 patent were ineligible for use as prior art.

Pursuant to 35 U.S.C. § 103(c), MPEP 706.02(l)(1) and MPEP 706.02(l)(2), the burden resides with the applicants to show that the '771 patent and the '603 application was commonly owned at the time the claimed invention was made or subject to an obligation of assignment that would establish common ownership.

When the '603 application was filed August 16, 2002, both the '603 application and the application of the '771 patent (U.S. patent application serial no. 09/569,789, "the '789 application) listed David T. Curiel, Victor N. Krasnykh, Ramon Alemany and Igor Dmitriev as inventors and the inventors of both applications had assigned or were obligated to assign their respective inventions to Merial Limited at the time the invention was made. The assignment of the '789 application was recorded on September 28, 2000 on Reel 011158/Frame 0884. The assignment of the '603 application was recorded on September 25, 2000 on Reel 011139/Frame 0691. Therefore, the appellants believe that common ownership has been established and as such U.S. Patent No. 6,824,771 is disqualified as prior art.